

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 03, 2022**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

PATRICK FLEETWOOD and MICHAEL  
FLEETWOOD,  
Plaintiffs,  
v.  
WASHINGTON STATE UNIVERSITY,  
Defendant.

No. 2:20-CV-00355-SAB

**ORDER DENYING MOTION TO  
EXCLUDE**

Before the Court is Plaintiffs' Motion to Exclude, ECF No. 41. Plaintiffs are represented by Matthew Crotty. Defendant is represented by Debra Lefing and Brian Baker. The motion was considered without oral argument.

Plaintiffs request that the Court exclude the Declaration of Dan B. Patterson, ECF No. 36, which Defendant submitted in support of its Motion for Summary Judgment, ECF No. 32. Plaintiffs state that Defendant did not disclose Mr. Patterson as a witness as part of its Fed. R. Civ. P. 26(a) initial disclosures. Thus, Plaintiffs argue that the Court should exclude Mr. Patterson's Declaration under Fed. R. Civ. P. 37(c)(1).

Defendant in response argues that the Court should deny Plaintiffs' motion. Defendant states that Mr. Patterson is merely a custodian of records whose testimony is intended to attest to the authenticity and completeness of the records. Additionally, Defendant states that there is no surprise or prejudice from the

**ORDER DENYING MOTION TO EXCLUDE # 1**

1 nondisclosure of Mr. Patterson because the records Mr. Patterson attested to in his  
2 Declaration were ones that *Plaintiffs* provided to Defendant during discovery.

3 The Court is inclined to deny Plaintiffs' motion. However, the Court sets a  
4 hearing with the parties to discuss whether Plaintiffs would like to depose Mr.  
5 Patterson before the Court proceeds on Defendant's Motion for Summary  
6 Judgment.

7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. The Court **sets** a hearing with the parties on **March 8, 2022**, at **10:00**  
9 **a.m.** by videoconference. Case participants will be provided with separate call-in  
10 details by email from the Court's staff.

11 2. At the hearing, the parties should be prepared to discuss (1) whether  
12 Plaintiffs want an opportunity to depose Mr. Patterson before the Court rules on  
13 Defendant's Motion for Summary Judgment; and (2) if so, what the proposed  
14 briefing schedule would be for ruling on Defendant's motion.

15 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
16 Order and provide copies to counsel.

17 **DATED** this 3rd day of March 2022.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is fluid and cursive, with a horizontal line drawn underneath it.

23 Stanley A. Bastian  
24 Chief United States District Judge  
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